

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Teecie Dove	Team: Squad #2	CCRB Case #: 202106173	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 08/29/2021 2:50 PM	Location of Incident: Union Avenue and Ainslie Street	Precinct: 90	18 Mo. SOL 2/28/2023	EO SOL 2/28/2023	
Date/Time CV Reported Wed, 10/13/2021 3:24 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 10/13/2021 3:24 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Carlos Ponce	19531	953263	090 PCT
2. PO Michael Tung	18086	959318	090 PCT

Officer(s)	Allegation	Investigator Recommendation
A. PO Carlos Ponce	Abuse: Police Officer Carlos Ponce seized § 87(2)(b) s property.	
B. PO Carlos Ponce	Abuse: Police Officer Carlos Ponce damaged § 87(2)(b) s property.	
C. PO Carlos Ponce	Abuse: Police Officer Carlos Ponce detained § 87(2)(b)	
D. PO Michael Tung	Abuse: Police Officer Michael Tung detained § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

§ 87(2)(b) filed this complaint via the CCRB website on October 13th, 2021. This case was originally assigned to Investigator Keymani Dunkley. It was reassigned to Investigator Teecie Dove on December 28th, 2021.

On August 29th, 2021, at approximately 2:50 PM in the vicinity of Union Avenue and Ainslie Street in Brooklyn, Police Officer Carlos Ponce and Police Officer Michael Tung of the 90th Precinct stopped § 87(2)(b) who was riding a § 87(2)(b) moped, for committing multiple traffic infractions. Police Officer Ponce issued summonses to § 87(2)(b) and he confiscated § 87(2)(b)'s moped (**Allegation A: Abuse of Authority—Seizure of Property**, § 87(2)(g)). While transporting § 87(2)(b)'s moped back to the 90th Precinct stationhouse, Police Officer Ponce crashed the moped and damaged the vehicle (**Allegation B: Abuse of Authority—Property Damage**, § 87(2)(g)). The officers allegedly placed § 87(2)(b) into the police vehicle (**Allegation C and D: Abuse of Authority – Detainment**, § 87(2)(g)) but ultimately released him with summonses for unlicensed operation of a motor vehicle, driving an unregistered motorcycle, failure to yield to a pedestrian/vehicle, and for being unlicensed (**BR 08**).

§ 87(2)(g), § 87(4-b)

Body-worn camera (BWC) footage was received from the BWCs of Police Officer Ponce and Police Officer Tung. Police Officer Ponce's BWC footage is attached to IAs #51 (**BR 04**) and #53 (**BR 05**), and Police Officer Tung's BWC footage is attached to IA #52 (**BR 06**). The footage is summarized in IA #67 (**BR 07**).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Carlos Ponce seized § 87(2)(b)'s property.

§ 87(2)(b) was interviewed by the CCRB on October 25th, 2021 (**BR 01**). Police Officer Ponce was interviewed on December 28th, 2021 (**BR 02**). Police Officer Tung was interviewed on February 18th, 2022 (**BR 03**).

It is undisputed that, on August 29th, 2021, § 87(2)(b) was driving his moped down Grand Street in Brooklyn while delivering for § 87(2)(b) when he improperly passed through the bike lane. At the intersection of Grand Street and Ainslie Street, Police Officer Ponce and Police Officer Tung stopped § 87(2)(b). Police Officer Ponce asked for § 87(2)(b)'s driver's license and registration. § 87(2)(b) did not have a driver's license or vehicle registration, and his moped did not have a license plate. Police Officer Ponce issued summonses to § 87(2)(b) for unlicensed operation of a motor vehicle, driving an unregistered motorcycle, failure to yield to a pedestrian/vehicle, and for being unlicensed (**BR 08**). Police Officer Ponce told § 87(2)(b) that his moped would be confiscated.

§ 87(2)(b) stated that, when Police Officer Ponce asked for his driver's license, § 87(2)(b) provided him with his New York State learner's permit, issued on August 13th, 2021 (**BR 09**). Police Officer Ponce confiscated § 87(2)(b)'s moped due to a lack of registration and license plates.

Police Officer Ponce stated that § 87(2)(b) provided him with a § 87(2)(b) non-driver's ID, and Police Officer Ponce confiscated his moped due to a lack of driver's license, registration, and license plates. Police Officer Tung stated that § 87(2)(b) provided an identification card to Police Officer Ponce, but he was unsure of the details of this ID.

At 01:30 into Police Officer Ponce's BWC footage (BR 04), Police Officer Ponce asks § 87(2)(b) for his driver's license, and § 87(2)(b) states that he does not have one. Police Officer Ponce asks for any form of photo ID, and § 87(2)(b) provides him with an ID. The BWC does not clearly show § 87(2)(b)'s ID, and it is undetermined whether § 87(2)(b) provided Police Officer Ponce with a learner's permit or a § 87(2)(b) non-driver's ID. Police Officer Ponce and Police Officer Tung search for the VIN number on § 87(2)(b)'s scooter, but they do not find one. Police Officer Ponce issues § 87(2)(b) four summonses for being unregistered, being uninsured, driving without license plates, and driving without a driver's license. Police Officer Ponce confiscates § 87(2)(b)'s vehicle and provides him with instructions on how to retrieve his vehicle from the stationhouse. Police Officer Ponce tells § 87(2)(b) that he must retrieve the voucher for his vehicle from the 90th Precinct stationhouse and register his vehicle. He states that once § 87(2)(b) has the registration paperwork, he can recover his moped from the stationhouse.

The NYPD Property Clerk Invoice § 87(2)(b) shows that Police Officer Ponce created an invoice for § 87(2)(b)'s moped on August 29th, 2021, at 8:08 PM. In it, Police Officer Ponce noted that § 87(2)(b)'s vehicle was confiscated for being unregistered, uninsured, and without a license plate.

Patrol Guide Procedure 209-09 (BR 11) states that, "if a limited use vehicle is unregistered and/or the operator unlicensed, the vehicle will be removed to the precinct of occurrence, impounded, and invoiced." This Patrol Guide procedure defines minibikes and mopeds as limited use vehicles. In addition, Patrol Guide procedure 209-37 (BR 12) states that, when an officer seizes a motorized scooter, the officer must invoice the vehicle and provide the vehicle's operator with instructions on how to recover their property.

§ 87(2)(g) both the officers and § 87(2)(b) confirmed that § 87(2)(b)'s moped was unregistered, § 87(2)(g). In addition, Police Officer Ponce's BWC (BR 04) shows that Police Officer Ponce provided § 87(2)(b) with detailed instructions on how to retrieve his property, and the seizure was properly documented in the Property Clerk Invoice (BR 10). § 87(2)(g)

Allegation (B) Abuse of Authority: Police Officer Carlos Ponce damaged § 87(2)(b)'s property.

Allegation (C) Abuse of Authority: Police Officer Carlos Ponce detained § 87(2)(b).

Allegation (D) Abuse of Authority: Police Officer Michael Tung detained § 87(2)(b).

§ 87(2)(g), § 87(4-b)

All parties agree that, while confiscating § 87(2)(b)'s moped, Police Officer Ponce mounted the vehicle and drove a short distance before making a U-turn. The moped wobbled as Police Officer Ponce drove, and the moped ultimately fell on its right side while Police Officer Ponce was driving. Police Officer Ponce fell to the ground along with the moped, but no other vehicles or pedestrians were involved in the crash. Police Officer Ponce was not injured. The moped sustained damage in the form of scratches near the floorboard and righthand side, but it remained operational (BR 13).

§ 87(2)(b) stated that, after the officers confirmed that § 87(2)(b) did not have a driver's license or vehicle registration, he turned off the vehicle and provided Police Officer Ponce with the keys, per the officer's request. The officers put § 87(2)(b) in the back of their vehicle, and from there, § 87(2)(b) saw Police Officer Ponce and his moped clearly. Police Officer Ponce mounted the vehicle and drove approximately two meters before crashing. Police Officer Ponce and Police Officer Tung assessed the damage after the crash. The officers told § 87(2)(b) that he was free to go, and Police Officer Ponce once again mounted the moped and drove it to the stationhouse.

Both officers stated that § 87(2)(b) was never placed in the back of the officers' patrol car. After Police Officer Ponce decided to seize § 87(2)(b)'s vehicle, Police Officer Tung called for a tow truck. The officers learned that no tow truck was available, and they decided to bring the vehicle back to the stationhouse themselves. Police Officer Tung drove the patrol car while Police Officer Ponce transported § 87(2)(b)'s moped. After the crash, the officers took account of the damage to the vehicle.

Police Officer Ponce stated that he never intended to ride § 87(2)(b)'s moped back to the stationhouse, but that he intended to push it back. Before taking the vehicle, Police Officer Ponce asked § 87(2)(b) to explain the moped's various functions. Police Officer Ponce had ridden a moped before, as he had confiscated multiple mopeds during his tenure, but he was unfamiliar with § 87(2)(b)'s brand of moped. After § 87(2)(b) explained the functions, Police Officer Ponce began to push the moped. He was not aware that the moped was turned on, and he accidentally hit the accelerator. The moped began to speed up, and Police Officer Ponce quickly mounted the moped, since he weighed 280 pounds and he believed that his weight would slow the vehicle. Police Officer Ponce wobbled on the vehicle and made a slight U-turn before he and the vehicle fell to the right and hit the ground. Police Officer Ponce was riding § 87(2)(b)'s vehicle for approximately 10-20 seconds before the crash. After crashing, Police Officer Ponce took account of the vehicle's damage and pushed it the rest of the way to the stationhouse.

Police Officer Tung stated that, after learning that no tow-truck was available, he and Police Officer Ponce agreed that Police Officer Ponce would ride § 87(2)(b)'s moped back to the stationhouse. Police Officer Tung was inside of the patrol car, which was in front of § 87(2)(b)'s moped, when Police Officer Ponce crashed. Police Officer Tung did not witness the crash himself. Police Officer Tung exited his vehicle and assessed the situation. Eventually, Police Officer Tung got back into his vehicle while Police Officer Ponce mounted the moped and rode it back to the stationhouse.

Police Officer Tung prepared a Police Accident Report (**BR 14**) and a Motor Vehicle Collision Worksheet (**BR 15**). In both documents, Police Officer Tung identified Police Officer Ponce as the driver, and he stated in the narrative, "The vehicle did tip over while being pushed due to the fact that the operator accidentally throttled the gas. Property damage only. Reporting officer did not witness the accident."

A City-involved Accident Report (UF-18) was requested from both DAO and the 90th Precinct regarding this incident but none was on file (**BR 15**).

Neither Police Officer Ponce's nor Police Officer Tung's BWC footage captures the crash (**BR 04, 05, 06**). The first portion of Police Officer Ponce's BWC (**BR 04**) ends at 3:09 PM. The second portion of his BWC (**BR 05**) begins at 3:13 PM and ends at 3:14 PM. It is unclear whether the crash occurred before or after the second portion of Police Officer Ponce's BWC.

The second portion of Police Officer Ponce's BWC footage (**BR 05**), the duration of which is one minute and nine seconds, shows Police Officer Ponce riding § 87(2)(b)'s vehicle for approximately one block. Police Officer Ponce is riding § 87(2)(b)'s moped when the footage begins, but he sways while riding, and he appears to be struggling to ride the vehicle. At 00:14, Police Officer Ponce stops at the intersection of Union Avenue and Borinquen Place, but he stays on the vehicle. At 00:22, Police Officer Ponce continues riding. He crosses the intersection and drives approximately halfway down the block, still wobbling, before stopping the vehicle in the middle of the road and dismounting, at 00:42. He begins pushing the vehicle into the bike lane before the footage ends.

Both Police Officer Tung's BWC (**BR 06**) and the first portion of Police Officer Ponce's BWC (**BR 04**) show § 87(2)(b) standing on the sidewalk throughout the incident. At 16:25 in Police Officer Tung's BWC, after Police Officer Ponce issues summonses to § 87(2)(b) the officers allow § 87(2)(b) to retrieve his belongings from the moped before it is confiscated. The officers prepare to leave while § 87(2)(b) is standing outside on the street. There is no indication that the officers take or intend to take § 87(2)(b) into custody at any point.

Patrol Guide Procedure 200-02 (**BR 24**) states that the NYPD pledges to protect the lives and *property* of its fellow citizens and to respect the dignity of each individual and render its services with courtesy and civility.

New York State Vehicle and Traffic Law §1104 (**BR 16**) states that officers are permitted to violate certain portions of the Vehicle and Traffic Law when engaged in emergency action, but they are not permitted to act with "reckless disregard" for the safety of those around them even when involved in emergency action.

Given Police Officer Tung's and § 87(2)(b)'s statements that Police Officer Ponce intentionally rode § 87(2)(b)'s moped, and Police Officer Ponce's BWC footage which shows him riding § 87(2)(b)'s moped for approximately one minute, including an eight-second period in which Police Officer Ponce is stopped at an intersection before he continues driving the moped, the investigation credited § 87(2)(b) and Police Officer Tung's accounts that Police Officer Ponce intentionally rode § 87(2)(b)'s moped, rather than Police Officer Ponce's account that he only hopped on it briefly to stabilize it when it turned on accidentally while he was pushing it. Considering that Police Officer Ponce acknowledged that he did not know how to operate the brand of moped which § 87(2)(b) owned, that he acknowledged that walking the moped to the stationhouse was a possibility, and that his BWC footage shows him wobbling while on the moped both before and after stopping at the intersection, § 87(2)(g)

§ 87(2)(g) Police Officer Ponce's choice § 87(2)(g) ride § 87(2)(b)'s moped, despite his acknowledged lack of knowledge and skill in riding § 87(2)(b)'s type of moped. § 87(2)(g)

§ 87(2)(g) the officers' BWC shows no indication that § 87(2)(b) was ever to be taken into custody, and that § 87(2)(b) stood outside on the street throughout the incident. § 87(2)(g)

Patrol Guide Procedure 217-04 (**BR 23**) states that, in all cases of a vehicle collision or accident in which the city may be involved, officers must prepare a Police Accident Report. In any case in

which an accident occurred resulting in property damage, but no personal injury resulted, a City Involved Accident Report must be prepared.

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 20).
- Police Officer Ponce has been a member-of-service for 9 years and has been a subject in one previous CCRB complaint and two previous allegations, none of which were substantiated.

§ 87(2)(g)

- Police Officer Tung has been a member of service for 6 years and has been a subject in one previous CCRB complaint and one previous allegation, which was not substantiated. Police


§ 87(2)(g)

Mediation, Civil, and Criminal Histories

- Mediation was not offered to § 87(2)(b) due to an Agency moratorium on sending cases to the Mediation Unit.
- As of April 5th, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this incident (BR 21).

§ 87(2)(b)

Squad: 02

Investigator:		<u>Teecie Dove</u>	<u>4/26/2022</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Alexander Opoku-Agyemang</u>	<u>IM Opoku-Agyemang</u>	<u>4/26/2022</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date